

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UI 238

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|--|---|-------|
| In the Matter of |) | |
| |) | |
| AGATE WATER COMPANY |) | ORDER |
| |) | |
| Application for Approval of a Rental |) | |
| Agreement with an Affiliated Interest. |) | |

DISPOSITION: APPLICATION APPROVED WITH CONDITIONS

On March 30, 2005, Agate Water Company (Agate) filed an application with the Public Utility Commission of Oregon (Commission) pursuant to ORS 757.495 and OAR 860-036-0730, requesting approval of a rental agreement between Agate Water Company and Claude and Lorna Johnson, affiliated interests. A description of the filing and its procedural history is contained in the Staff Report, attached as Appendix A, and incorporated by reference.

Based on a review of the application and the Commission's records, the Commission finds that the application satisfies applicable statutes and administrative rules. At its Public Meeting on April 19, 2005, the Commission adopted Staff's recommendations.

OPINION

Jurisdiction

ORS 757.005 defines a "public utility" and Agate is a public utility subject to the Commission's jurisdiction.

Affiliation

An affiliated interest relationship exists, as defined under ORS 757.015.

Applicable Law

ORS 757.495 requires public utilities to seek approval of contracts with affiliated interests within 90 days after execution of the contract.

ORS 757.495(3) requires the Commission to approve the contract if the Commission finds that the contract is fair and reasonable and not contrary to the public interest. However, the Commission need not determine the reasonableness of all the financial aspects of the contract for ratemaking purposes. The Commission may reserve that issue for a subsequent proceeding.

CONCLUSIONS

1. Agate is a public utility subject to the jurisdiction of the Commission.
2. An affiliated interest relationship exists.
3. The agreement is fair, reasonable, and not contrary to the public interest.
4. The application should be granted, as modified herein, including certain conditions and reporting requirements.

ORDER

IT IS ORDERED that the application of Agate Water Company to enter into an affiliated interest transaction with Claude and Lorna Johnson is approved, subject to the conditions further stated in Appendix A.

Made, entered, and effective APR 29 2005.

BY THE COMMISSION:



Becky L. Beier
Becky L. Beier
Commission Secretary

A party may request rehearing or reconsideration of this order pursuant to ORS 756.561.
A party may appeal this order to a court pursuant to ORS 756.580.

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: April 19, 2005

REGULAR _____ **CONSENT** X **EFFECTIVE DATE** _____ N/A

DATE: April 4, 2005

TO: Public Utility Commission

FROM: Marion Anderson

THROUGH: Lee Sparling, Marc Hellman, and Rebecca Trujillo

SUBJECT: AGATE WATER SYSTEM: (Docket No. UI 238) Application for Approval of Buildings Rentals from Claude and Lorna (Lynn) Johnson, Affiliated Interests.

STAFF RECOMMENDATION:

The Commission should approve Agate Water System's (Agate) application for a property rental agreement with Claude and Lorna (Lynn) Johnson, (the Johnsons) affiliated interests, with the following conditions:

1. Agate shall provide the Commission access to all books of account, as well as all documents, data and records of Agate and the Johnsons that pertain to transactions between the two.
2. The Commission reserves the right to review, for reasonableness, all financial aspects of this arrangement in any rate proceeding or earnings review under an alternative form of regulation.
3. Agate shall notify the Commission in advance of any substantive changes to the agreement, including any material changes in any cost. Any changes to the agreement terms that alter the intent and extent of activities, under the agreement from those approved herein, shall be submitted for approval in an application for a supplemental order (or other appropriate format) in this docket.

DISCUSSION:

This application was filed on March 30, 2005 under ORS 757.015, 757.495, and OAR 860-036-0730. The Johnsons are employees of Agate and Lynn Johnson is the daughter of Agate's owner.

The following issues were investigated:

- ◆ Scope of the Agreement
- ◆ Transfer Pricing
- ◆ Determination of Public Interest Compliance
- ◆ Records Availability, Audit Provisions and Reporting Requirements

Scope of the Agreement

This application covers the rental of an 1100 square foot office facility with outbuildings for equipment, work area, and storage of 720 square feet.

Transfer Pricing

A verbal contract was made in 1997 between the application's parties at the current monthly charge. Agate has been made aware of the need to timely file any future related party activities for Commission review (OAR 860-036-0737). Property improvements were made by the owners in 1999. In order to determine compliance with the lower of cost or market dictate of OAR 860-036-0739(3)(e), staff contacted five Bend commercial property management companies on March 31, 2005, and requested estimated square footage cost quotations on the buildings at issue. Three companies complied. All of the estimations resulted in charges higher than the application's \$1,000 charge per month.

Determination of Public Interest Compliance

This agreement is fair and reasonable and not contrary to the public interest.

Records Availability, Audit Provisions, and Reporting Requirements

Staff Recommendation 1 affords the Commission adequate access to records and provides for the auditing of transactions regarding this matter between Agate and the Johnsons.

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PROPOSED COMMISSION MOTION:

Agate Water System's buildings rentals from Claude and Lorna (Lynn) Johnson be approved.

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